

having ordinary skill in the art. *Crown Operations International, Ltd. v. Solutia, Inc.*, ___ F.3d ___, 62 USPQ2d 1917 (Fed. Cir. 2002); *Helifix Ltd. v. Blok-Lok, Ltd.* 208 F.3d 1339, 54 USPQ2d 1299 (Fed. Cir. 2000); *Electro Medical Systems S.A. v. Cooper Life Sciences, Inc.*, 34 F.3d 1048, 32 USPQ2d 1017 (Fed. Cir. 1994). Further, in imposing a rejection under 35 U.S.C. §102, the Examiner is required to point to “page and line” of a reference wherein each feature of a claimed invention asserted to be disclosed. *In re Rijckaert*, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984). That burden has not been discharged. Indeed, there is a functionally significant structural difference between the claimed invention and the semiconductor device disclosed by Hashimoto et al. that scotches the factual determination that Hashimoto et al. identically describe the claimed invention within the meaning of 35 U.S.C. §102.

Specifically, the invention defined in independent claim 1 is directed to a semiconductor device comprising, inter alia, an active region surface which is entirely rounded and inclined downward toward the isolation region. The Examiner alleged that Hashimoto et al. disclose a semiconductor device wherein the surface of the active region is entirely rounded referring to Fig. 1. Applicant would initially point that the Examiner has failed to comply with judicial standards by pointing to “page and line” wherein Hashimoto et al. disclose that the surface of the active region is entirely rounded. *In re Rijckaert*, *supra*; *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, *supra*. The simple fact should be stated -- Hashimoto et al. **do not**, repeat **not**, disclose or even suggest that the surface of the active region is entirely rounded as in the claimed invention.

Drawings, of course, are not drawn to scale and, hence, cannot be relied upon to establish claimed features if the specification is silent. *Huckerson-Halberstadt, Inc. v. AVAV Group International, Inc.* ___ F.3d ___, 55 USPQ2d 1487 (Fed. Cir 2000). See, also, *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 230 USPQ 81 (Fed. Cir. 1986) and *In re Olson*, 212 F.2d 590, 101 USPQ 401 (CCPA 1954).

In apparent recognition of the failure of Hashimoto et al. to identically describe the claimed invention, the Examiner asserted that the depicted semiconductor device comprises a gate electrode 18 over an active region with an insulating film 17 therebetween, wherein the surface of the active region is rounded and inclined downwardly toward isolation region 2, referring to Fig. 1 of Hashimoto et al. The Examiner's explanation fall short of establishing that Hashimoto et al. disclose a semiconductor device wherein the surface of the active region is entirely rounded as claimed. What Hashimoto et al. do disclose is that the slope of the edge portion of the field oxide film 2 in the circuit area is gentler than that of the field oxide film 2 in the memory cell area, and that lateral extension (bird's beak) of the field oxide film 2 in the circuit area is longer than that of the field oxide film 2 in the memory cell area.

However, Hashimoto et al. neither disclose nor suggest that the active region is entirely oxidized when the field oxide film is formed. Accordingly, the active region of the semiconductor device disclosed by Hashimoto et al. inevitably includes a flat portion, and in that device the surface of the active region is not entirely rounded.

Further evidence of the lack of a factual basis to support the imposed rejection is apparent from comparing Figs. 18A and 18B of the present invention with Fig. 1(a) of Hashimoto et al. In the present invention, the active region is entirely oxidized and,

hence, the surface of the active region in an access MOS transistor portion is lower than that of a driver MOS transistor portion. In contra distinction to the present invention, in accordance with the teachings of Hashimoto et al., the height of the surface of the active region in the circuit area is the same as that in the memory cell area. In other words, the active region is not entirely oxidized and the surface of the active region is not entirely rounded in the semiconductor device disclosed by Hashimoto et al.

The above-argued structural difference between the claimed invention and the semiconductor device disclosed by Hashimoto et al. scotches the factual determination that Hashimoto et al. identically describe the claimed invention within the meaning of 35 U.S.C. §102. *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); *Kloster Speedsteel AB v. Crucible Inc.*, *supra*. Applicant, therefore, submits that the imposed rejection of claims 1, 3 and 4 under 35 U.S.C. §102 for lack of novelty is evidenced by Hashimoto et al. is not factually viable, hence, solicits withdrawal thereof.

Claims 2 and 6 were rejected under 35 U.S.C. §103 for obviousness predicated by Hashimoto et al. in view of Ando et al.

Claim 5 was rejected under 35 U.S.C. §103 for obviousness predicated upon Hashimoto et al. in view of Ando et al. and Kuriyama et al.

Each of the above rejections under 35 U.S.C. §103 is traversed. Specifically, each of claims 2, 5 and 6 depends from independent claim 1. Applicant incorporates herein the arguments previously advanced in traversing the imposed rejection of claim 1 under 35 U.S.C. §102 for lack of novelty evidenced by Hashimoto et al. Indeed, Hashimoto, et

al. neither disclose nor suggest a semiconductor device as defined in independent claim 1, comprising, inter alia., an active region having a surface which is entirely rounded. The additional references to Ando et al. and Kuriyama et al. do not cure the argued deficiencies of Hashimoto et al. Accordingly, even if the applied references are combined, the claimed invention would **not** result. *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988).

Applicant, therefore, submits that the imposed rejection of claims 2 and 6 under 35 U.S.C. §103 for obviousness predicated upon Hashimoto et al. in view Ando et al., and the imposed rejection of claim 5 under 35 U.S.C. §103 for obviousness predicated upon Hashimoto et al. in view of Ando et al. and Kuriyama et al. are not factually or legally viable, and hence, solicits withdrawal thereof.

It should, therefore, be apparent that the imposed rejections are not viable and hence that all pending claims are in condition for immediate allowance. Favorable consideration is, therefore, respectfully solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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